IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

INCOME TAX APPEAL NO.248 OF 2002

The Commissioner of Income-tax,
Central-II, Mumbai. Appellant

versus

M/s.Supreme Industries Ltd. Respondent

Mr. K. R. Chaudhary, i/b. Mr. H. D. Rathod for the appellant.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 16th August 2004

P.C.

Heard.

2. In the memo of appeal, three substantial questions of law have been proposed which read thus:

> "(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the decision of the CIT(A) in which he deleted the addition of Rs.7095544/- made by the Assessing Officer to the value of closing stock in respect of A.Y. 1995-96 on account of unavailed Modvat credit ignoring the fact that the issue is pending for a decision by the Supreme Court?
>
> (ii) Whether on the facts and in the circumstances of the case in law, the Hon'ble ITAT was justified in upholding the deletion of disallowance of interest of Rs.1564857/- paid by the assessee in respect of A.Y. 1995-96 on borrowed funds used for making interest true

advance to M/s. Premier Lighting Industries Ltd., ignoring the nexus between the borrowed funds and the "interest free advance made"?

(iii) Whether on the facts and in the circumstances of the case in law the Hon'ble ITAT was justified in upholding the deletion of disallowance of interest payable on borrowed funds diverted for making interest free advance to M/s.KSPL in respect of A.Y. 1995-96 ignoring the fact that the decision relied upon by the Ld.CIT(A) has no application to the facts of the present case.?"

3. In so far as question (i) is concerned, in view of the authoritative pronouncement of the Supreme Court in the case of Commissioner of Income-tax v. Indo Nippon Chemicals Co. Ltd., 261 ITR 275, the view of the Tribunal cannot be faulted and, therefore, the proposed question (i) cannot be said to be substantial question of law.

4. As regards the question (ii), in our view the view of the Tribunal cannot be faulted in the light of the decision of this Court in the case of Phaltan Sugar Works Ltd. vs. Commissioner of Wealth Tax, 208 ITR 988.

5. With regard to proposed question (iii), suffice it to observe that the Tribunal held that interest free advance was made out of available funds and not out of borrowed funds.

6. No substantial question of law arises.

7. Appeal is dismissed.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)